

United States Department of Justice

General Legal Activities



Office of the Pardon Attorney

FY2023 President's Budget Submission

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I. Overview

For FY 2023, the Office of the Pardon Attorney (OPA) requests a total of \$22,462,000, 80 positions, and 60 FTE, including 35 attorneys, to achieve its mission of advising and assisting the President in the exercise of the executive clemency power conferred on him by Article II, Section 2 of the Constitution. This request supports current service needs.

Introduction

For over 125 years, the President has requested and received the assistance of the Attorney General and his/her designees in the Department of Justice in exercising clemency power with regard to persons convicted for committing offenses against the United States. Within the Department, OPA is the component assigned to carry out this function under the direction of the Deputy Attorney General. The long-standing role of Department officials advising the President on clemency matters is reflected in various public record documents dating to the late 19th century. Moreover, since at least 1898, presidents have adopted advisory rules to describe their programs for processing clemency applications and their directions to the Attorney General in carrying out the Department's clemency advisory functions. The rules, which govern OPA's work but do not bind the President, are approved by the President and published by the Attorney General. The current version of the administrative rules was promulgated in October 1993 and amended in August and September 2000. They are published in 28 C.F.R. §§ 1.1 to 1.11 and available on OPA's web site at <https://www.justice.gov/pardon/legal-authority-governing-executive-clemency>.

The two principal forms of clemency sought by applicants are pardon after completion of sentence and commutation (reduction) of a sentence being served. The traditional standards by which clemency applications are evaluated in connection with the preparation of the Department's letters of advice (recommendations) to the President have been utilized for decades and are publicly available on OPA's web site at <https://www.justice.gov/pardon/about-office-0>.

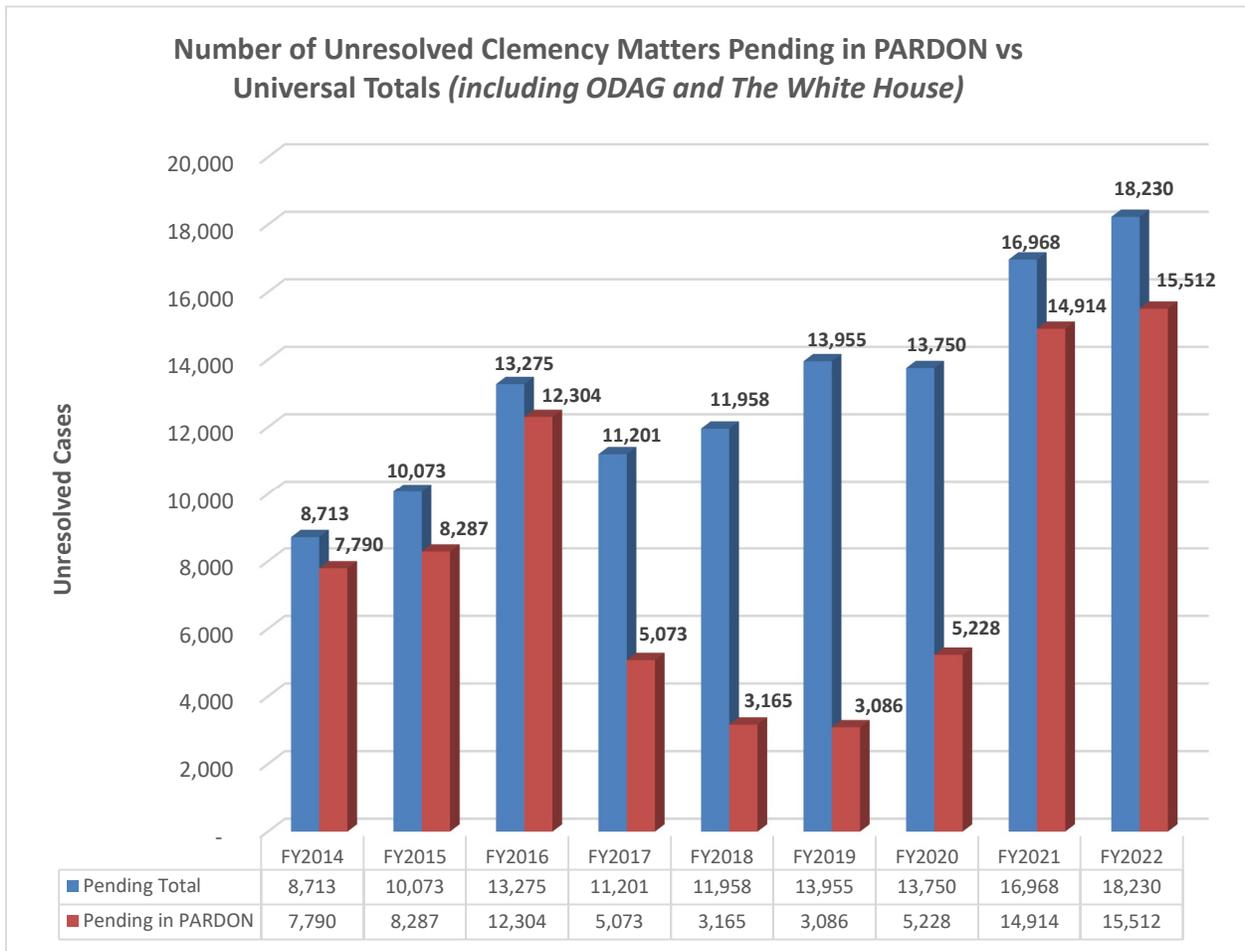
Program Description

The primary function of OPA is to receive, evaluate, and investigate clemency applications and prepare the recommendation of the Department of Justice as to the appropriate disposition of each application for the signature of the Deputy Attorney General. In addition, OPA responds to inquiries concerning executive clemency petitions and the clemency process from applicants, their legal representatives, members of the public, Members of Congress, and various federal, state, and local officials and agencies; prepares all necessary documents to effect the President's decision to grant clemency; and notifies each clemency applicant of the President's decision concerning his or her clemency request. When asked to do so, OPA also provides general advice to the White House concerning executive clemency procedures and the historical background of clemency matters.

Challenges

OPA's workload has continued to increase over the last decade to include a high-profile presidential clemency initiative and various DOJ and White House priority processing projects. Between FY 2010 and FY 2020, OPA received approximately 45,275 new petitions (clemency cases) for processing, of which 40,586 were petitions for commutation of sentence. In FY 2016

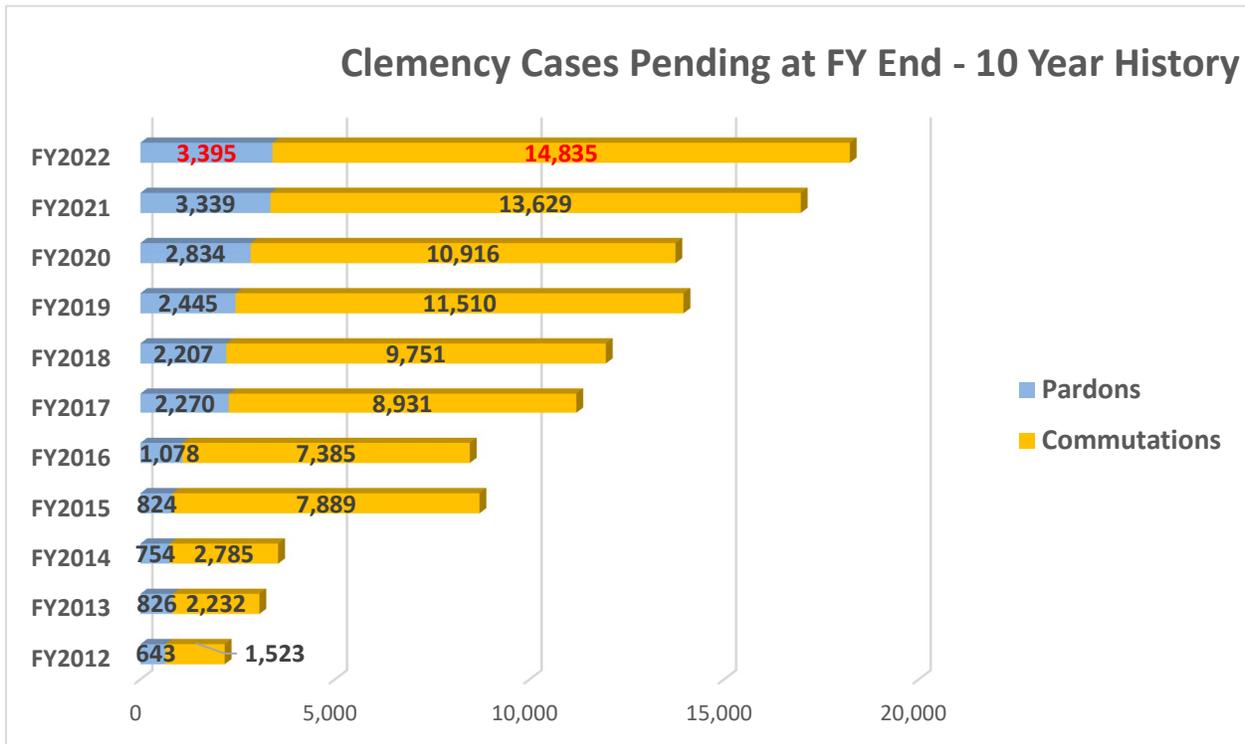
alone, OPA received a total of 12,025 new petitions. Up until FY 2014, OPA’s authorized staffing level was 11 positions - a level that was established for the office in the mid-1990s, when OPA received approximately 600 new clemency requests each fiscal year. The authorized staffing level was raised to 20 positions in FY2015 and then 80 in FY2022, but half of FY2022 is over and we are still in a continuing resolution, which means none of the additional positions or funding has been realized as of the date of this submission, so the volume of work is still daunting for such a small office. The current services level requested in the FY 2023 budget will allow OPA to continue to address the significant backlog in case processing derived from the increased workload.¹



OPA is required to process, analyze, and make recommendations on all applications it receives, regardless of whether the request for clemency is meritorious or not. Both denial and favorable recommendations are forwarded to the Deputy Attorney General and the President for final adjudication. Based on current policy, OPA is required to rework cases that have already been fully analyzed if deemed necessary by either the President or the Deputy Attorney General. Since there is no limit to the number of clemency petitions that can be submitted to the OPA for consideration by the President and the President has plenary power to decide if and when to make clemency decisions, OPA has no control over the size of the universal caseload. OPA could easily continue to receive cases beyond its capacity to process as it has over the past few

¹ The chart entitled **Number of clemency matters pending in OPA vs. Universal Total** shows the backlog of cases in OPA vs. those cases pending throughout the entire clemency process on the last day of each fiscal year for the past few years or during the last reporting for the current fiscal year.

years, and cases can also remain in “pending” status somewhere other than OPA while remaining on OPA’s pending case list, per the chart above that shows the number of cases currently pending in OPA as opposed to those pending with the Deputy Attorney General and The White House. The impact of this massive influx of new cases over the past decade will continue to be felt by the office for many years to come. As a result, maintaining the current roster of staff and resources as requested for FY 2023 is essential to OPA’s continuing ability to address increased workloads and provide letters of advice to the President on the merits of those who have applied for executive clemency as well as provide a historical background of clemency matters.²



II. Summary of Program Changes

No program changes are requested.

III. Appropriations Language and Analysis of Appropriations Language

General Legal Activities language is displayed in the GLA rollup budget submission.

IV. Program Activity Justification

A. Office of the Pardon Attorney

² The chart entitled **Clemency Cases Pending at FY End – 10 Year History** shows the successive increase of petitions pending universally at the end of a fiscal year or at the close of the most recent reporting period of the current year.

Office of the Pardon Attorney	Direct Pos.	Estimate FTE	Amount (\$000s)
2021 Enacted	20	19	\$4,810
2022 Annualized CR	20	20	4,810
2022 Rebaseline Adjustment	60	30	11,613
2022 President's Budget	80	50	16,423
Adjustments to Base and Technical Adjustments	0	10	6,039
2023 Current Services	80	60	22,462
2023 Request	80	60	22,462
Total Change 2022-2023	0	10	\$6,039

1. Program Description

OPA's primary function is to receive, evaluate, and investigate clemency applications and prepare the recommendation of the Department as to the appropriate disposition of each application for the signature of the Deputy Attorney General and consideration by the President. OPA also responds to inquiries concerning executive clemency petitions and the clemency process from applicants, their legal representatives, members of the public, members of Congress, and various federal, state, and local officials and agencies; prepares all necessary documents to effect the President's decision to grant as well as deny clemency; and notifies each clemency applicant of the President's decision concerning his or her clemency request. When requested by the White House, OPA also provides general advice to the President concerning executive clemency procedures and the historical background of clemency matters.

2. Performance and Resource Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Office of the Pardon Attorney												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2021		FY 2021		FY 2022		Current Services Adjustments and FY 2023 Program Changes		FY 2023 Request	
Total Costs and FTE (Reimbursable: FTE are included, but costs are bracketed and not included in totals)			FTE	\$000	FT E	\$00 0	FT E	\$000	FTE	\$000	FTE	\$000
			20	4,810	19	4,810	50	16,423	10	6,039	60	22,462
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2021		FY 2021		FY 2022		Current Services Adjustments and FY 2023 Program Changes		FY 2023 Request	
Program Activity	5.2	Maintain a Safe and Humane Prison System	FTE	\$000	FT E	\$00 0	FT E	\$000	FTE	\$000	FTE	\$000
			20	4,810	19	4,810	50	16,423	10	6,039	60	22,462
APG Measure:	N/A											
KPI Output:	N/A											
Performance Measure:	N/A											
Performance Measure:	N/A											

*Denotes inclusion in the DOJ Quarterly Status Report and DOJ Annual Performance Plan.

*This table is required.

3. Performance, Resources, and Strategies

a. Performance Plan and Report for Outcomes

OPA's sole mission is to assist the President in the exercise of his constitutional clemency power, thus OPA's performance measure is the number of clemency petitions fully processed from receipt through an official recommendation submitted for higher level review by the Deputy Attorney General and/or President, as well as case closures without Presidential action during a given fiscal year. Likewise, OPA's outcome measure is the percentage of clemency petitions that remain pending within OPA as opposed to those that are pending all throughout the clemency process at the end of the fiscal year. In FY 2015, there were 10,073 cases pending universally, while 8,287 were still pending in OPA, which means approximately 82% of all clemency cases were pending in OPA as opposed to waiting for a review by the Office of the Deputy Attorney General (ODAG) and The White House. When compared to the 13,625 cases that were pending universally at the beginning of FY 2020 and factoring in that only 5,004 cases were pending in OPA as of September 2020, that equated to just about 37% of all cases pending within OPA. However, due to the current policy of pulling back and reworking all cases that are left unresolved by the outgoing administration, OPA was required to pull back over 8,000 cases at the start of the Biden Administration in 2021 because the Trump Administration failed to decide on the recommendations put forth by OPA. At the time of this document, this small office continues to maximize its limited resources but maintains 85% of the universal case load,

which are mostly cases that have been reworked 1-5 times already. The degree to which OPA will be able to meet its performance outcome target of less than or equal to 40% of the universal caseload will depend significantly on the volume of new petitions filed in upcoming fiscal years and how quickly OPA can work through the high cumulative number of petitions filed, but unresolved during higher level review in the last few fiscal years.

Since OPA has no control over the number of clemency cases the Department (or President) receives for review or how long cases remain in the final stages of review within the Office of the Deputy Attorney General and the White House, OPA started clearly delineating the number of cases that are pending universally compared to those pending within OPA in FY 2014. In addition, OPA changed its performance outcome to track the percentage of cases pending in OPA versus those pending universally. In FY 2019, OPA also created a new performance measurement to track the number of clemency petitions that are more than one year old and still pending within OPA because it has now set a goal of processing cases within one year of them being received and opened by the Department.

b. Strategies to Accomplish Outcomes

In support of DOJ Strategic Objective 4.3: Reform and strengthen the criminal and juvenile justice system to ensure fair and just treatment for all. OPA will continue to reduce the overwhelming backlog of clemency cases submitted while also processing all new clemency cases submitted to the Department for review. OPA intends to maintain the necessary balance between attorneys and support staff to continue efficient processing of both new and pending clemency petitions. Given the volume of OPA's current caseload, it is critical that the office maintain equal levels of experienced clemency attorney advisors and support staff to evaluate the merits of incoming petitions, and draft cogent, legally correct letters of advice to assist the President's decision-making. OPA's support staff continue to provide crucial assistance in processing clemency petitions by completing cursory reviews, requesting additional information and records when necessary, drafting screening letters, and completing other necessary correspondence like responding to Freedom of Information Act and Privacy Act requests, responding to miscellaneous correspondence, correspondence assigned to the Office by the Department's Executive Secretariat, as well as case assignments from the White House Correspondence Office. In an effort to cut down on the number of case status requests, OPA now proactively discloses the status of all cases received or closed since 1989 on the Department's public facing website at <https://www.justice.gov/pardon/search-clemency-case-status-since-1989>. In addition, the information that feeds the search feature can be downloaded in the aggregate in Excel format, which negates the need for us to respond one-to-one to such requests. This facilitates moving petitions through the review process in a more timely and cost-effective manner and alleviates the administrative burden on OPA staff by allowing them to focus their expertise on legal case analysis. Where possible, OPA will continue to seek cost-effective ways to accomplish the clerical tasks required to process and manage its caseload, including maintaining OPA's electronic case management and tracking system.

c. Priority Goals

Not Applicable.

V. Program Increases by Item

Not Applicable.

VI. Program Offsets by Item

Not Applicable.

VII. Exhibits